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11 Trustee of the Bankruptcy Estate of
Synergy Acceptance Corporation

12 UNITED STATES BANKRUPTCY COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15 In re

16 SYNERGY ACCEPTANCE
17 CORPORATION,
18 Debtor.

19 -----
20 E. LYNN SCHOENMANN, Trustee of the
Bankruptcy Estate of
21 Synergy Acceptance Corporation

22 Plaintiff,

23 vs.

24 JAMES A. TORCHIA, et al.,

25 Defendants
26
27
28

Case No. 11-31712 HLB

Chapter 7

Adversary Proceeding No.: 12:-03156
HLB

DECLARATION OF LOREN KIEVE
IN SUPPORT OF THE TRUSTEE'S
MOTION TO STRIKE THE
DECLARATION OF KIMBERLY
KRUSE

Date: May 8, 2014
Time: 10:00 a.m.

1 Loren Kieve declares as follows:

- 2 1. I am counsel for the plaintiff E. Lynn Schoenmann (the “Trustee”) in this action.
- 3 2. I have personal knowledge of the facts set forth in this declaration. If called to testify as
- 4 a witness, I could and would testify competently to these facts under oath.
- 5 3. In her declaration (ECF Doc. No. 195) supporting the Defendants’ Opposition to the
- 6 Trustee’s Motion for Summary Judgment as well as the Defendants’ Cross-Motion for
- 7 Summary Judgment, Ms. Kruse states that:

8 16. I was a custodian of records for SAC throughout my employment as Chief

9 Financial Officer. The voluminous auto loan sale documents and the Quickbooks

10 database and the exhibits identified as Exhibits 6~8. 12, 18, 32, and 37 in the Appendix

11 to Defendants' Motion for Summary Judgment are true and correct copies of the

12 original records kept by SAC in the regular course of its business, and it was in the

13 regular course of business of SAC for an employee or representative of SAC with

14 knowledge of the information contained in the records to record and transmit or receive

15 such information for inclusion in the business records of SAC. The records were made

16 or received at or near the time or reasonably soon thereafter by persons with knowledge

17 of the events described therein. [Emphasis added.]

- 18 4. Exhibits 6-8 were prepared by Ms. Kruse for this litigation, as she recites in ¶ 4 of her
- 19 declaration. They therefore cannot be “true and correct copies of the original records
- 20 kept by SAC in the regular course of its business.”
- 21 5. Exhibit 12 appears to be partial excerpts from a bank statement of some form. Because
- 22 they are incomplete they cannot be “true and correct copies of the original records kept
- 23 by SAC in the regular course of its business.”
- 24 6. Exhibit 18 appears to be another excerpt from a bank statement. It, too, cannot be a
- 25 “true and correct cop[y] of the original records kept by SAC in the regular course of its
- 26 business.”
- 27 7. The documents contained in Exhibit 37 indicate that they are bills of some form, for
- 28 sundry accounts, from GreatAmerica Leasing Corporation (“Great America”). They
- appear to be incomplete.
8. Contrary to Ms. Kruse’s sworn declaration, the Exhibit 37 documents are not “true and
- correct copies of the original records kept by SAC in the regular course of its

1 business.” Rather they are parts of larger groups of documents. These documents bear
2 document production numbers GAFS000650 to GAFS000656, then skip to
3 GAFS000502 to GAFS000512, then skip to GAFS000346 to GAFS000375, and then
4 skip to GAFS000150 to GAFS000175. There is no explanation for the missing
5 document numbers.

6 9. Attached as Exh. A to this declaration is a copy of the letter dated February 13, 2014
7 from the defendants’ counsel to me. It recites that it is enclosing “a disc containing
8 documents produced to Defendants by GreatAmerica Financial Services Corporation.”
9 It states that the documents are being produced with “labels GAFS 00001 -
10 GAFS001305.”

11 10. Attached as Exh. B is a copy of the label on the disc that accompanied the February 13,
12 2014 letter. I reviewed the disc and the documents found in Kruse Exhibit 37
13 correspond to the documents with the same document numbers in the disc.

14 11. These documents therefore are not, as Ms. Kruse has sworn under penalty of perjury,
15 “true and correct copies of the original records kept by SAC in the regular course of its
16 business.” They did not come from SAC files or records and have not been properly
17 authenticated from any source.

18 12. Contrary to the statement in the February 13, 2014 letter that “[i]t appears that these
19 documents have already been produced to in this litigation,” I am not aware that they
20 were ever produced before they arrived along with that letter some two months after
21 the close of discovery.

22 13. Attached as Exh. C are excerpts from the deposition given by Ms. Kruse on March 28,
23 2014 in the *Georgia American Pegasus* litigation.

24 14. Attached as Exh. D are excerpts from the deposition given by defendant Torchia on
25 March 27, 2014 in the *Georgia American Pegasus* litigation.

26 I declare under penalty of perjury that the foregoing is true and correct.
27
28

1 Executed on April 17, 2013



Loren Kieve

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A

Exhibit A

QUILLING, SELANDER, LOWNDS, WINSLETT & MOSER

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS
2001 BRYAN STREET, SUITE 1800
DALLAS, TEXAS 75201

BRITT McCLUNG
bmccclung@qslwm.com

TELEPHONE: (214) 871-2100
TELEFAX: (214) 871-2111

February 13, 2014

Via Federal Express #7979 0456 3662

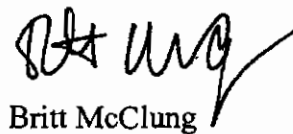
Loren Kieve
Kieve Law Offices
5A Funston Avenue
The Presidio of San Francisco
San Francisco, California 94129-1110

Re: *E. Lynn Schoenmann, Bankruptcy Trustee, v. James Torchia, et al.*
Adversary Proceeding No. 12-3156 HLB

Dear Mr. Kieve:

Enclosed is a disc containing documents produced to Defendants by GreatAmerica Financial Services Corporation. It appears that these documents have already been produced to you in this litigation; however, as we have not been able to confirm this production, we are now producing these documents with labels GAFS 000001 - GAFS 001305 out of an abundance of caution. Please contact my office if you have any problems retrieving the enclosed documents.

Sincerely,



Britt McClung

Enclosure
5487.0000

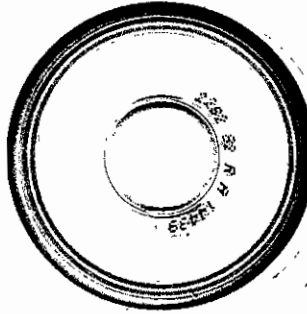
4838-8115-6888, v. 1

Exhibit B

*E. Lynn Schoenmann, Bankruptcy Trustee,
v. James Torchia, et al.*
Northern District of California, San Francisco Division



2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100



**Documents produced by Defendants
GAFS000001 – GAFS001305**

February 13, 2014

Exhibit C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AMERICAN PEGASUS SPC,)
ACTING BY AND THROUGH)
ITS JOINT OFFICIAL)
LIQUIDATORS, STUART)
SYBERSMA AND MICHAEL)
PENNER,)
)
Plaintiff,)
) CIVIL ACTION FILE
vs.)
) NO: 13-CV-03035-WSD
THE CLEAR SKIES HOLDING)
COMPANY, LLC, JAMES A.)
TORCHIA, MARC A.)
CELELLO, CELELLO LAW)
GROUP, LLC AND JARO,)
LLC,)
)
Defendants.)

DEPOSITION OF KIMBERLY A. KRUSE
ATLANTA, GEORGIA
FRIDAY, MARCH 28, 2014

REPORTER: TANYA L. VERHOVEN-PAGE,
CCR-B-1790

JOB 72278

March 28, 2014
10:06 a.m.

Deposition of
KIMBERLY A. KRUSE, held at the offices
of Alston & Bird, 1201 West Peachtree
Street, Atlanta, Georgia before
Tanya L. Verhoven-Page, Certified Court
Reporter and Notary Public of the State of
Georgia.

APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

NATHANIEL PALMER, ESQ.
Reid Collins & Tsai
4301 Westbank Drive
Building B, Suite 230
Austin, Texas 78746

HEATHER BYRD ASHER, ESQ.
KEVIN HEMBREE, ESQ.
Alston & Bird
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

On behalf of the Defendants:

MICHAEL QUILLING, ESQ.
Quilling Selander Lownds Winslett Moser
2001 Bryan Street
Suite 1800
Dallas, Texas 75201

ALSO PRESENT: Marc A. Celello, Esq.

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WITNESS: KIMBERLY A. KRUSE

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EXHIBITS:

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Exhibit 107	Document bearing Bates Stamp Number AP00001527	70
Exhibit 108	Document bearing Bates Stamp Number AP00002715	91
Exhibit 109	Document bearing Bates Stamp Number D005983 through D005984	95
Exhibit 110	Synergy Acceptance Corporation Balance Sheet as of May 31, 2007	102

EXHIBITS:

Kruse Exhibit	Description	Page
Exhibit 111	Synergy Acceptance Corporation Balance Sheet as of June 30, 2007	104
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Exhibit 119	Charles E. Hall, Jr. Promissory Note	140

<p style="text-align: right;">Page 10</p> <p>1 K. KRUSE</p> <p>2 ATLANTA, GEORGIA; FRIDAY, MARCH 28, 2014</p> <p>3 10:06 A.M.</p> <p>4</p> <p>5 Thereupon --</p> <p>6 KIMBERLY A. KRUSE,</p> <p>7 called as a witness, having been first duly sworn,</p> <p>8 was examined and testified as follows:</p> <p>9</p> <p>10 EXAMINATION</p> <p>11 BY MS. ASHER:</p> <p>12 Q Please state your name for the record.</p> <p>13 A Kimberly Ann Kruse.</p> <p>14 Q And, Ms. Kruse, my name is Heather Asher,</p> <p>15 and I represent the plaintiff in this action.</p> <p>16 Have you ever been deposed before?</p> <p>17 A Yes.</p> <p>18 Q How many times?</p> <p>19 A I think just once.</p> <p>20 Q What type of matter was that?</p> <p>21 A It was an SEC matter for Ben Chui.</p> <p>22 Q Do you understand that you're going to be</p> <p>23 answering questions under oath today?</p> <p>24 A Yes.</p> <p>25 Q Have you taken any medication today?</p>	<p style="text-align: right;">Page 11</p> <p>1 K. KRUSE</p> <p>2 A No.</p> <p>3 Q Do you feel okay?</p> <p>4 A Yes.</p> <p>5 Q Is there any reason that you wouldn't be</p> <p>6 able to testify truthfully today?</p> <p>7 A No.</p> <p>8 Q And you have been deposed before, but</p> <p>9 I'll just go back over some of the basic rules of the</p> <p>10 deposition.</p> <p>11 The first is that I ask that you answer</p> <p>12 all the questions verbally, not with any hand</p> <p>13 gestures so that the court reporter can record your</p> <p>14 words.</p> <p>15 Also, please allow me to finish asking</p> <p>16 questions so she can record the full question, and</p> <p>17 I'll do the same for you and let you finish your</p> <p>18 answer before I ask another question.</p> <p>19 If -- we'll probably break for lunch, but</p> <p>20 if you need a break before then, just let us know,</p> <p>21 and we'll take a couple minutes to give you a break,</p> <p>22 and if I ask any questions that aren't clear to you</p> <p>23 or you would like additional clarification, please</p> <p>24 let me know and I'll restate the question.</p> <p>25 A Okay.</p>
<p style="text-align: right;">Page 12</p> <p>1 K. KRUSE</p> <p>2 Q Are you appearing today in the American</p> <p>3 Pegasus SPC versus Clear Skies Holding Company, Marc</p> <p>4 Celello, James Torchia and Jaro, LLC matter?</p> <p>5 A Yes.</p> <p>6 Q And you have agreed to appear voluntarily</p> <p>7 today?</p> <p>8 A Yes.</p> <p>9 (Previously marked Hall Deposition</p> <p>10 Exhibit No. 48 was identified for</p> <p>11 the record.)</p> <p>12 BY MS. ASHER:</p> <p>13 Q I am going to hand you what has</p> <p>14 previously been marked as Exhibit 48.</p> <p>15 Have you seen this document before?</p> <p>16 A I've seen it. I don't -- I think I have.</p> <p>17 Q Have you ever reviewed it?</p> <p>18 A Not in detail.</p> <p>19 Q If you look at the middle of the page, it</p> <p>20 says original complaint, and the caption</p> <p>21 represents -- references the action that we just</p> <p>22 discussed.</p> <p>23 Are you familiar at all with the claims</p> <p>24 that are outlined in this complaint?</p> <p>25 A No, not the exact claims.</p>	<p style="text-align: right;">Page 13</p> <p>1 K. KRUSE</p> <p>2 Q Have you reviewed any documents in</p> <p>3 preparation for today?</p> <p>4 A For this specific --</p> <p>5 Q For this deposition?</p> <p>6 THE WITNESS: Was that anything</p> <p>7 that we reviewed? Is that -- I don't</p> <p>8 know.</p> <p>9 MR. QUILLING: Don't --</p> <p>10 THE WITNESS: Between the</p> <p>11 bankruptcy --</p> <p>12 MR. QUILLING: Don't get confused.</p> <p>13 Her confusion arises out of in</p> <p>14 preparation with preparing her</p> <p>15 declaration in the San Francisco case,</p> <p>16 and she reviewed some documents. She's</p> <p>17 talking about this for coming here today.</p> <p>18 What have you reviewed to come here</p> <p>19 today?</p> <p>20 THE WITNESS: Nothing.</p> <p>21 BY MS. ASHER:</p> <p>22 Q Okay. And did you receive a subpoena in</p> <p>23 this matter?</p> <p>24 A I believe I did.</p> <p>25 MR. QUILLING: Are you talking</p>

K. KRUSE

Q What was your position with the viatical business?

A When it was just him and I, it was just kind of a jack of all trades, whatever needed to be done.

Q And how were you compensated? Did you have a salary or ownership?

A At first, it was kind of part-time because it wasn't that busy, and I was paid accordingly, and then when it became full-time, I believe -- I can't remember what the exact starting salary was, but it was probably around 30,000.

Q Can you explain what a viatical business is.

A Yes.

Q What is it?

A It's buying life insurance policies from terminally ill individuals for less than the face value of the policy.

Q How long did you work at National Viatical, or are you still working within that same -- what's considered to be that same company?

A I worked for National Viatical until 2007.

K. KRUSE

Q And between 1998 and 2007, were you also working at any other companies associated with Mr. Torchia?

A Yes.

Q Which companies are those?

A Synergy Acceptance Corp.

Q Any other companies?

A We may have had -- not that I was working for directly I can think of.

Q Mr. Torchia had other businesses during that time period?

A We had started -- I think -- it was International Viatical but never really -- we incorporated the name, but we never did anything with that company, but that's the only one I can think of.

Q Are you aware of any other companies Mr. Torchia had from 1998 to 2007?

A No, that I can think of.

Q Okay. So from meeting Mr. Torchia in 1998, you've worked at the National Viatical and Synergy Acceptance Corp companies?

A Yes.

Q What year did you start working at Synergy Acceptance Corp?

K. KRUSE

A The company was started in 2003. So that's when I started working -- you know, doing work for that company, but I did not get paid a salary -- a separate salary because I was getting a salary from National Viatical, and we were just starting that up.

So I was only paid through National Viatical for the first couple of years.

Q When did you start getting paid by Synergy Acceptance Corp?

A I believe it was 2006.

Q When you started working with Synergy Acceptance Corp?

A It may have been 2005. Sorry. I think 2005.

Q And that's something else I should have mentioned.

If you answer a question and later on you remember something else, just let me know.

A Okay.

Q You stated that you started working with Synergy Acceptance Corp in 2003. Do you recall if you had a title or what that title was when you started working there?

A I had no title.

K. KRUSE

Q What were your responsibilities at that time?

A Doing accounts payable, receivable. Just the general bookkeeping.

Q Was it similar to what you had been doing before at Center Group or at the cable company?

A Yes.

Q What type of business does Synergy Acceptance Corp have?

A A subprime auto loan finance.

Q Had you ever been involved with that type of business before?

A No.

Q Do you know if Mr. Torchia had been involved in that type of business before you guys started the company?

A Not to my knowledge.

Q Do you recall how he got involved in that business or how you guys got involved in that business?

A Not specifically. He had, you know, developed some relationships, some business contacts, and it developed from that.

Q When you guys were starting the company

1 K. KRUSE
 2 in 2003, what did you kind of project the benefit to
 3 be of getting into that market?
 4 A To grow a company, you know, have a
 5 successful business.
 6 Q Did you ever have an ownership interest
 7 in Synergy Acceptance Corp?
 8 A No.
 9 Q You stated earlier, after a couple of
 10 years, you started getting paid.
 11 Do you recall what your salary was when
 12 you started getting paid?
 13 A I can give you a ballpark. I think it
 14 was around 110 annually.
 15 Q Did you have an employment agreement at
 16 that time?
 17 A No.
 18 Q Did you ever have an employment
 19 agreement?
 20 A Yes.
 21 (Kruise Deposition Exhibit No. 106
 22 was marked for the record.)
 23 BY MS. ASHER:
 24 Q You've just been handed what's marked as
 25 Exhibit 106.

1 K. KRUSE
 2 Do you recognize this document?
 3 A Yes.
 4 Q What is it?
 5 A It is my employment agreement with
 6 Synergy Acceptance Corp.
 7 Q Was this one of the documents that you
 8 produced pursuant to the subpoena?
 9 A Yes, ma'am.
 10 Q If you could, turn to the second page.
 11 Do you see at the top where it is dated
 12 January 30th, 2008?
 13 A Yes.
 14 Q At that time, had there ever been a
 15 previous employment agreement?
 16 A No.
 17 Q Written employment agreement.
 18 Please look down at the numbered section
 19 one. Do you see the language starting on the second
 20 line of that paragraph where it says: Employer
 21 hereby employs Employee to serve Employer in the
 22 capacity of Chief Financial Officer?
 23 A Yes.
 24 Q Prior to this date of January 30th, 2008,
 25 had you been working as a Chief Financial Officer for

1 K. KRUSE
 2 Synergy Acceptance Corp?
 3 A No. I did not have that specific title.
 4 Q What was your -- what were your previous
 5 titles?
 6 A I really didn't have a title. We weren't
 7 big on titles.
 8 Q What was the reason for entering into
 9 this employment agreement?
 10 A This was under the direction of Charles
 11 Hall. When he came to Synergy Acceptance, he decided
 12 that employment agreements should be in place for key
 13 employees.
 14 Q And so was it your understanding that
 15 your position had changed or any of your
 16 responsibilities had changed now that you became the
 17 Chief Financial Officer?
 18 A No.
 19 Q If you look at the last -- the last two
 20 sentences of that first paragraph -- well, the first
 21 paragraph in section one. It says: The effective
 22 term of this agreement is -- shall be for a period of
 23 three years.
 24 Did you work there for another three
 25 years after this agreement?

1 K. KRUSE
 2 A No.
 3 Q When did you stop working at Synergy
 4 Acceptance Corp?
 5 A I was terminated in 2010.
 6 Q What was the reason for the termination?
 7 A Gosh, they gave me a long list of -- that
 8 I wasn't performing my duties and they no longer
 9 needed my services.
 10 Q Who gave you this?
 11 A Ben Chui handed me the termination.
 12 Q Do you still have a copy of that
 13 termination?
 14 A I believe my attorney would have. I had
 15 an attorney that represented me.
 16 Q What's the name of that attorney?
 17 A Can I look in my phone? I can't remember
 18 his name.
 19 Q Sure.
 20 A It's been a while. Steven Wolfe.
 21 Q And you said before that earlier you
 22 hadn't had any official titles, and in this
 23 employment agreement, you were given the title of
 24 Chief Financial Officer.
 25 While you were working at Synergy

K. KRUSE

they purchased loans. Can you kind of walk me through some details of that business, like exactly how to -- who are they purchasing loans from, what are the terms?

A Independent dealers -- sometimes they are called buy here/pay here dealers -- need financing. So a customer would come into a dealership, independent dealer, and they don't have the best credit, and they can't, like, get a loan with their bank. So they would send it to us to see if, you know, we would finance that customer.

Q How would you determine whether or not you would finance that customer?

A It would be based on risk; you know, their credit, their job history, their stability, ability to pay.

Q Were there certain underwriting terms that you guys had to follow?

A Yes, ma'am.

Q And where -- where were those underwriting terms set? Was it in a written agreement, or was it something that was understood among the people in the office?

A Rob dealt with the underwriters, and at

K. KRUSE

that time, I'm -- you know, they had guidelines that they followed, written guidelines, but they could, you know, based on -- you know, they didn't have to stick to the guidelines.

They could say, you know, the term could go a little bit longer if it was a good car or that kind of thing. So there were general guidelines that they followed.

Q What was Mr. Torchia's position in the company?

A He was the president and CEO.

Q On a day-to-day basis, what types of things did he do in the company?

A He would, you know, make the decisions. You know, he would help structure the loans, you know, and approve whether or not they would buy a loan. Sometimes, not on every loan. And he would -- he got the investor money, dealt with the investors and the marketing reps and helped, you know, building the company.

Q How often did you interact with Mr. Torchia while you were working at Synergy Acceptance Corp? Beginning from 2003, were you in contact with him daily, weekly?

K. KRUSE

A Every day. We were in the same office.

Q And what types of matters did you guys discuss on a daily basis?

A Usually things like, you know, bills and, you know, loan, sales and just day-to-day operations.

Q Were there any kind of regular reports or anything that you produced on a weekly or monthly basis for the company?

A Only as needed, as they requested them.

Q Did you prepare balance sheets or financial spreadsheets, any type of financial items like that for the company?

A Well, we kept the books in QuickBooks so any time, you know, you could pull a profit and loss or balance sheet. So any time they wanted to look at it, you could just pull it up for any time period.

Q Who maintained those records?

A I did.

Q So if Mr. Torchia said I need to see the financials for 2005, you're the person that he would go to to get that information?

A Yes, ma'am.

Q Is there anyone else that would have access to that information?

K. KRUSE

A We had other people that were assisting at that point when it was getting so big with the posting, you know, the bills and printing out checks, you know, collecting the payments and, you know, reconciling the bank accounts and the deposits and keeping up with, you know, all of that.

Q By around 2006, how many employees would you estimate Synergy Acceptance Corp had?

A 2006, maybe 40, 50.

Q Were those employees paid directly by Synergy Acceptance Corp?

A Yes, ma'am.

Q Okay. So that was a part of Synergy Acceptance Corp's overhead?

A Yes.

Q Did Synergy Acceptance Corp also sell loans to other parties?

A Yes.

Q And what companies did they sell loans to?

A Boston Asset Management and Cube Securities.

Q What type of companies are those?

A They were investment firms.

K. KRUSE

Q And do you see in the caption where it says that it is in the case of Synergy Acceptance Corp as debtor?

A Yes.

Q And it has adversary proceeding number 12-03156.

Do you see that?

A Yes.

Q Why did you prepare this declaration? In connection with what issue, were you preparing this declaration?

A The Synergy Acceptance Corp bankruptcy.

Q Please turn to paragraph four. It's on the second page of the declaration. In the second sentence, you state I prepared these summaries from voluminous records, all of which were produced to the trustee through counsel. The summaries were produced to the trustee, as well.

What was the purpose of preparing the summaries that you know are attached to this declaration?

A They were summaries of all of the loan sales.

Q And if you look at the -- at Paragraph

K. KRUSE

Number 5 on the next page, it discusses the profit on sale. Can you just explain to me what the profit on sale is?

A That is the earnings from the sale of loans.

Q And would the profit for sale -- profit on sale does that account for any associated overhead costs?

A No, ma'am.

Q Any other expenses of Synergy Acceptance Corp -- are any other expenses of Synergy Acceptance Corp associated with the profit on sale number?

A No.

Q In Paragraph 8, you discuss a sample contract reflecting the sale of auto loans by SAC to APAL.

Is that general form similar to what would have been -- what was used in the Smart Move deficiency balance transaction? Is it -- do you know whether or not it is the same form?

A I don't know.

Q Okay. In Paragraph 15, you discuss the electronic database of QuickBooks.

Do you know whether or not you still have

K. KRUSE

access to or whether anyone has possession of QuickBook records after 2011?

A No. That I do not know who would have that, if anybody. After 2007, those were the

computers that would have been in Synergy's buildings and offices that have been --

Q Okay. Was this declaration -- was -- were there loan summaries that you were discussing -- was that in connection with discussing kind of the price that was paid for the purchase of Synergy Acceptance Corp?

A No. It was -- it was to show, you know, how many loans Synergy did before the sale. How much volume and revenue was generated, you know, every month.

Q Do you have any knowledge of how the purchase price of the Synergy Acceptance Corp -- the sale of Synergy Acceptance Corp, how the purchase price was determined?

A No.

Q Had you ever been involved with valuing Synergy Acceptance Corp for any other transactions that they entered into?

A No.

K. KRUSE

MS. ASHER: I think that's it.

MR. QUILLING: We'll reserve our questions.

(Thereupon, the deposition was concluded at approximately 2:25 p.m.)

KIMBERLY A. KRUSE

Subscribed and sworn to before me this ____ day of _____, 2014.

Exhibit D

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AMERICAN PEGASUS SPC,)
ACTING BY AND THROUGH)
ITS JOINT OFFICIAL)
LIQUIDATORS, STUART)
SYBERSMA AND MICHAEL)
PENNER,)
)
Plaintiff,)
) CIVIL ACTION FILE
vs.)
) NO: 13-CV-03035-WSD
THE CLEAR SKIES HOLDING)
COMPANY, LLC, JAMES A.)
TORCHIA, MARC A.)
CELELLO, CELELLO LAW)
GROUP, LLC AND JARO,)
LLC,)
)
Defendants.)

DEPOSITION OF JAMES A. TORCHIA
ATLANTA, GEORGIA
THURSDAY, MARCH 27, 2014

REPORTED BY: TANYA L. VERHOVEN-PAGE,
CCR-B-1790

JOB 72277

March 27, 2014
10:05 a.m.

Deposition of
JAMES A. TORCHIA, held at the offices
of Alston & Bird, 1201 West Peachtree
Street, Atlanta, Georgia before
Tanya L. Verhoven-Page, Certified Court
Reporter and Notary Public of the State of
Georgia.

APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

NATHANIEL PALMER, ESQ.
Reid Collins & Tsai
4301 Westbank Drive
Building B, Suite 230
Austin, Texas 78746

HEATHER BYRD ASHER, ESQ.
KEVIN HEMBREE, ESQ.
Alston & Bird
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

On behalf of the Defendants:

MICHAEL QUILLING, ESQ.
Quilling Selander Lownds Winslett Moser
2001 Bryan Street
Suite 1800
Dallas, Texas 75201

ALSO PRESENT: Marc A. Celello, Esq.
- - -

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1 J. TORCHIA
2 ATLANTA, GEORGIA; THURSDAY, MARCH 27, 2014
3 10:05 A.M.
4
5 Thereupon --
6 JAMES A. TORCHIA,
7 called as a witness, having first duly sworn,
8 was examined and testified as follows:
9
10 EXAMINATION
11 BY MR. PALMER:
12 Q Good morning, Mr. Torchia, would you
13 please state your name for the record.
14 A James Torchia.
15 Q My name is Nathan Palmer. I represent
16 the joint liquidators for American Pegasus. We're
17 going to be talking about Synergy Acceptance in an
18 acquisition, its purchase by Benjamin Chui in 2007,
19 and your relationship with American Pegasus and one
20 of its fund, the American Pegasus Auto Loan Fund.
21 I plan on using a couple of shortened
22 phrases for some of these funds.
23 Is it okay if we refer to Synergy
24 Acceptance Corporation as SAC?
25 A Sure.

J. TORCHIA

these add-on products don't put them -- I think at the time we were doing a 20 percent payment to income ratio. So there's always a set of numbers that falls into line.

In other words, you know, if the GAP coverage put them at a 20 percent, whatever the number is, payment-to-income ratio, what I mean is their car payment is 25 percent of what their grossly monthly pay is, then you would have to back off or maybe not do the loan or maybe take the warranty GAP -- you know, warranty coverage off it or put the person in a different car. I mean, it's just not in a vanilla box. It's a moving target all the time on every single loan.

Q If you would look, there should be an Exhibit 7 there.

A Okay.

Q Take a look at that real quick.

A Uh-huh.

Q This looks to be a spreadsheet that has the loan sales to American Pegasus in 2006.

Does that look right to you?

A It looks like a spreadsheet. I didn't originate these, Nate.

J. TORCHIA

Q This was something Kim Kruse put together?

A Yes.

Q Turn to, it looks like, the second page of the spreadsheet.

A Yes.

Q There's sort of in the middle of the page a summary box for American Pegasus and you.

A Uh-huh.

Q And it looks like total profit for 2006 was about \$2.9 million. Does that correspond with your memory?

A I don't remember. If that's what it says -- Kim Kruse is going to -- you're deposing her tomorrow. You know, I just can't comment on these things with accuracy. She's the one that did it. I mean, I'm not the only guy -- the only guy in this company. There were 60 or 70 employees that did their job. Kim was with me since 1997, so --

Q Does she still work for you?

A She does.

Q The average profit per loan here is about 1500 bucks, it appears. And it looks like you sold a total of 1,937 loans to American Pegasus in 2006.

J. TORCHIA

And from Ms. Kruse's declaration I understand that this \$1,500 number for average profit did include the warranty and the GAP coverage expense.

For this number that is being calculated here, would that -- when you were determining average profit per loan, were you factoring in Synergy Acceptance Corporation's operating expenses, or is this just a reflection of how much --

A I think that's raw profit.

Is that what you're asking me?

Q Yes.

A That's probably raw profit. Again, that's a question for Kim Kruse.

Q Okay. Well, we should ask her.

MR. QUILLING: By "raw," do you mean gross?

THE WITNESS: I mean that's what we made in -- that was gross profits, yes.

BY MR. PALMER:

Q So this is just what you would make on fees, themselves?

A I would say fees and warranties.

Q I meant to include that --

J. TORCHIA

A And GAP.

Q -- when I said "fees."

And this also has two other companies, it appears, on here, Boston Asset and Cube?

A Uh-huh.

Q Who was Boston Asset?

A It's a company out of Malaysia that was going to start doing some loan origination with us, also.

Q And Cube?

A Cube was an investment type of -- you know, they were tiptoeing into the auto loan -- auto loan asset class. They were out of Russia.

I get around, don't I?

Q Malaysia, Russia.

It looks like you were charging, on this spreadsheet, 4.5 percent to American Pegasus. It seems to correspond with your memory?

A Uh-huh.

Q And it looks like you were charging 3 percent to Cube. Do you recall why there was a lower number for them?

A I don't. It could have been that we -- they were paying us some fees or shared in -- we

J. TORCHIA

shared in the profits of the loans. I just don't remember the arrangement.

Q And then if you would look at the next spreadsheet here --

A Again, Kim will answer that question, I'm sure.

Q Okay.

A Okay.

Q This looks to be a spreadsheet for 2007.

A Uh-huh.

Q All the way up, if you turn to the -- it looks like there's a break in the middle, on page three, at June 30th, 2007, and then it continues through September 7th, 2007. I'd like to look at the break at June 30th, 2007.

A Uh-huh.

Q Do you recall that being about the time Ben Chui acquired Synergy Acceptance Corporation?

A Yes, somewhere in that neighborhood. I think it was early July, but yes.

Q And this list, total profit for January 1st, 2007 through June 30th, 2007, it gave us 1.257 million and change; correct?

A It looks that way.

J. TORCHIA

Q And it looks like a total number of loans sold were almost 2600?

A Okay.

Q Does that correspond with your memory of what type of volume of business you were doing with APAL at that point in time?

A I just don't remember. Again, Kim Kruse.

Q And this 484 number, would you think that it included the GAP waiver coverage and warranty expense or warranty fee?

A Seems low.

Q And, again, the profit on there --

A It looks like Ben owes me money, actually.

Q And this average profit per loan here you would think refers to -- I believe we discussed earlier -- gross profits?

A Yes, I believe.

Q So it wouldn't account for Synergy Acceptance Corporation's other operating expenses?

A No, that wasn't after Synergy broke down the cost of each originating loans, no. That was gross profits. We're not smart enough to do that loan by loan.

J. TORCHIA

Q During the 2005, 2006 time frame when you're selling what appears to be a decent number of loans to American Pegasus Loan Fund, was Synergy Acceptance profitable at the end of the day?

A Was Synergy Acceptance Corp. -- what was the -- what were the time parameters again?

Q The 2005, 2006 period.

A I mean without a balance sheet in front of me --

(Torchia Deposition Exhibit No. 79 was marked for the record.)

BY MR. PALMER:

Q Mr. Torchia, this is Exhibit 79. Do you recognize this document?

A I mean, I know what it is, yes. I guess so.

Q What is it?

A It's a balance sheet and audited financials, it looks like, or an auditor's report.

Q And if you look on the first page, this is for Synergy Acceptance Corporation; correct?

A Yes.

Q Do you recall having Synergy Acceptances financials audited?

J. TORCHIA

A I do.

Q And this -- this accounting firm at the bottom, Stresser & Associates, PC, is that who would have done it?

A Yes.

Q Why did you have SAC's financials audited?

A It might have been for one of our securities that we were offering, possibly.

Q So for those noteholders or investors, if it was something that was required?

A I think so. I just can't remember.

Q And would you have seen these when they were done?

A Yes, probably.

Q As one of the -- as the CEO, would you have followed sort of the balance sheet and income statement of the company over time?

A Yes, from a real high perch. Again, that would be Kim Kruse and my accountants and that kind of stuff.

Q So they would put it together; correct?

A Yes, the accountants would. And this would probably come from -- all the information would